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Attorneys for Defendants

9 HSBC MORTGAGE CORPORATION (USA) and
HSBC BANK USA, N.A.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

13 Philip Wong, Frederic Chaussy, and Leslie
14 Marie Shearn, individually, on behalf of all
15 others similarly situated, and on behalf of
the general public,

Plaintiffs,

17 v.
18 HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive.

Defendant.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF VARUGHESE
OOMMEN IN OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION FED. R. CIV. P. 23**

Date: October 10, 2008
Time: 9:00 A.M.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

21 I, Varughese Oommen, hereby declare and state:

22 1. I am over the age of 18, and I have personal knowledge of the facts listed
23 below. If called as a witness, I would testify to the following.

24 2. I work for HSBC Mortgage Corporation (USA) ("HMCU") as a Retail
25 Mortgage Lending Consultant, which is also commonly called a "loan officer." I have worked for
26 HMCU as a "loan officer" from 1998 to the present. I am assigned to the Loan Production Office
27 ("LPO") located at 534 Broadhollow Road, Melville, New York 11747. However, on a weekly

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LITTLER MENDE SON
A PROFESSIONAL CORPORATION
3649 Century Park East
5th Floor
Los Angeles, CA 90067-3107

1 basis, I do not often utilize the LPO. Most months, I will not even go into the LPO for one or two
 2 weeks at a time. On occasion, and as will more fully be described below, I also work with one of
 3 HSBC Bank USA, N.A.'s ("HBUS") bank branch locations in Jericho, New York. Prior to working
 4 with the Jericho branch, I previously also worked with, at various times, the Valley Stream and New
 5 Hyde Park, New York HBUS bank branches. However, for almost eight years, I did not work with
 6 any HBUS bank branches.

7 3. As a loan officer, I am responsible for originating mortgage loans and
 8 bringing these loans to closing, servicing the HMCU's customers related to these loan closings,
 9 identifying sources of business, and building my own customer base. This, in essence, is my
 10 business. I believe I am an outside salesperson who sells the HMCU "logo" or "brand."

11 4. I have chosen to focus my marketing efforts toward the East Indian
 12 community on Long Island. This source is responsible for 95% of my book of business. To
 13 generate my business and potential new customers, I rely on an extensive source of referrals from
 14 previous clients as well as referral relationships that have built up over the years. The referrals can
 15 come from attorneys, real estate brokers, CPAs and financial advisors. I also perform a variety of
 16 marketing activities including mailings and small advertisements in local Indian community papers
 17 and churches.

18 5. Another source of business is from the HBUS bank branch that I service.
 19 However, that bank branch source only represents approximately 5% of my business. I am present
 20 in the Jericho branch infrequently. I maintain contact with the Jericho bank personnel but my
 21 philosophy for success is that I do not or cannot grow my business by waiting for customers to come
 22 to me in bank branches. Rather, I go out to wherever the potential customers are. Therefore, other
 23 than performing "floor time" one to two times per month (being at the bank branch), I am rarely
 24 physically at an HBUS bank branch.

25 6. I generally work long hours most days, including some nights and some
 26 weekends. I will meet with clients in any number and variety of locations outside bank branch
 27 locations. The decision about where and when to meet clients is strictly for client convenience – I
 28 go where the client wants me to go so that I can originate business and close deals.

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1 7. On occasion, I will work with one of my referring Real Estate agents at an
 2 "Open House" event. When I do this, I physically go to the house being sold and talk to potential
 3 buyers, describe the HMCU mortgage products, and work to develop a personal relationship. I also
 4 visit various real estate people to develop business.

5 8. In order to identify potential customers, I have significant freedom to engage
 6 in all ethical conduct and activities that best help me meet sales goals. HMCU does not insist I do
 7 anything in particular to identify customer or to develop business. It also does not regulate the time I
 8 spend on the job in any way whatsoever. There is very little managerial control over my activities.
 9 In fact, I usually tell management to "leave me alone" and "don't bother me" so I can focus on my
 10 job.

11 9. Kathleen Lamb is my manager; however, I have little contact with her. She
 12 does require me to provide her with a weekly report of my proposed activities for the week, which I
 13 provide to her. Most often, Ms. Lamb and I contact each other by telephone while we are out in the
 14 field or on the road.

15 10. Because my job requires so much flexibility, it is necessary for me to obtain
 16 training in the most convenient way possible. HMCU provides training in various areas, which I can
 17 generally do online. This training allows me to receive specialized training that helps me to do my
 18 job.

19 11. I am not aware of any policies or procedures that require me to conduct my
 20 job in any particular way. In fact, based on my experience, I am allowed to dictate how and when I
 21 do my job. Except for attending a once monthly meeting, being available for contact and/or
 22 contacting my "assigned" Jericho bank branch on occasion, as well as "floor time" done in the
 23 Jericho bank branch once or twice per month, no one regulates how I spend my time.

24 12. I use a variety of methods to identify which loan products will work for a
 25 particular customer, and to deliver those products to customers I have worked to identify. With the
 26 exception of the requirement that I use the Loan Quest program to enter customer information and
 27 utilize HMCU loan products, I have significant discretion to identify the best loan products for a
 28 customer and how to best deliver those to my customers. No two customers are exactly the same.

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1 Because of this fact, I must work with each customer on a case-by-case basis and look at each
 2 customer's credit status and ability to repay the loan so that I can evaluate what works for them. I
 3 also need to assess their comfort level with different types of loan arrangements to decide if they will
 4 feel comfortable with the amount of financial risk they may be taking. Because an overwhelming
 5 majority of my customers are based upon years of doing business with them or their families and
 6 friends, they rely on me to use my own judgment to recommend HMCU product options. I have
 7 complete flexibility to perform these tasks.

8 13. I remain personally involved in the entire loan process from start to end,
 9 including the actual closing. As part of this process, I not only identify the right loan product for a
 10 customer, but I meet with the customer to begin the loan processing. I also use HMCU's Loan Quest
 11 program to input customer data. During this whole process, I maintain close contact with the loan
 12 underwriter to ensure that the loan is delivered to the customer. I also usually attend the "closing"
 13 on the house. And, of course, I also make myself available to the customer to ensure outstanding
 14 customer service and satisfaction. This also helps for developing other client referrals.

15 14. Nobody, except for me, dictates where and when I work. Although I work
 16 from home late in the evenings, I typically spend a great deal of my day on the road meeting clients,
 17 networking and generating business. Depending on the day and my customers' needs, I may work
 18 longer or shorter hours in various locations.

19 15. I do not generally work from a fixed location. As discussed above, most of
 20 my time is spent out developing business and meeting clients at various locations. I use my
 21 Blackberry and laptop to keep myself connected others while still remaining mobile and being able
 22 to do my job anywhere that my customers need me to be.

23 16. I make my schedule and set my hours. I am the number one producer in my
 24 region. It is my belief that if you count the hours you work, you not only cannot be successful, you
 25 cannot do your job at all.

200,000 to 300,000

26 17. As a loan officer, I earn an average of \$400,000 to \$500,000 per year. The job
 27 of a loan officer is like owning your own business. Essentially, the more you work, the more you
 28 earn. My clients have 24 hour telephone access to me, 7 days per week. HMCU does not force me

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1 to provide this service to my customers.

2 18. HMCU has a policy that customer application fees should not be waived.
 3 However, even though I have been told that I should collect these fees, it is up to me whether I will
 4 collect it or not. My practice is to decide on a case by case basis whether or not to collect these fees
 5 at the start of the application process. However, if the loan closes, this fee will be collected from the
 6 customer at closing. When a loan does not close, the application fee I waived comes out of my
 7 incentive plan compensation. Frankly, I look at my choice to "forget" to take the application fee as
 8 the price of doing business to keep my client happy, close the loan, build the business and make
 9 more money.

10 19. I am aware that managers can sometimes waive an application fee and that it
 11 is up to them to decide if they will do that or not.

12 20. I am not a salaried employee. I am not an hourly employee. Loan officers at
 13 HMCU are not "clock employees." HMCU do not want to see loan officers sitting behind a desk.
 14 That is not the best way to develop business and be successful. Given the fact that this job is really
 15 about a person managing his own time, I believe that this job should be a 1099 job.

16 21. The tremendous amount of flexibility I am given in deciding when, where and
 17 how I do my job is what makes me successful. If I was limited in the number of hours I could spend
 18 doing my job, or where I did my, or how I marketed and developed business, I would not able to do
 19 my job as well as I do it and to be successful as I am. This job requires me to have that independent
 20 discretion to conduct my job duties and I appreciate that I am not told to work a set number of hours
 21 a day in any particular location.

22 I declare under penalty of perjury under the laws of the State of New York and the
 23 United States of America that the foregoing declaration is true and correct to the best of my personal
 24 knowledge. Executed this 19 day of September 2008 in Scarsdale, New York.

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